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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/521).

The Counter-Terrorism Committee has received the attached supplementary report from Estonia, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 24 July 2002 from the Permanent Mission of Estonia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Estonia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism and has the honour to submit the attached supplementary report in accordance with the letter from the Chairman of the Counter-Terrorism Committee dated 1 May 2002 (see enclosure).

Enclosure

Supplementary report for the Counter-Terrorism Committee regarding the implementation of resolution 1373 (2001)

Estonia

In addition to the already presented (in accordance with UNSC Resolution 1373) Estonian report (27 December 2001), and pursuant to paragraphs 3 to 6 of the guidance note issued by the Counter-Terrorism Committee (CTC) on 26 October 2001 and the note issued by the CTC on 1 May 2002, Estonia is hereby providing a further supplementary report concerning the fight against terrorism and its financing in Estonia.

*** Sub-paragraph 1 (a):**

In Estonia, the financing of terrorism is not specified as a crime *expressis verbis*. However, according to Estonian legislation, the financing of terrorism is considered to be an integral part of a criminal offence, and therefore, the various forms of financing terrorism (*e.g.*: money laundering, the direct financing of a terrorist act as a means of supporting terrorism [laws specifying participation], and the organising of a criminal association, or belonging to one) are criminally punishable.

The Money Laundering Prevention Act § 2 defines "money laundering", and the definition conforms to the EU Directive 91/308 and the 40 recommendations of the Financial Actions Task Force. Money laundering has been criminalized with Criminal Code Article 148^{15} and in Article 394 of the Penal Code (to become effective on 1 September 2002). The activities of the persons obliged to fulfil the provisions of the Money Laundering Prevention Act are prescribed in Article 148^{8} of the Criminal Code and Articles 395 and 396 of the Penal Code. According to these provisions, any assets acquired through criminal activity are subject to confiscation, and the persons involved in these criminal activities are subject to criminal prosecution (punishable with a fine, or with imprisonment of up to 10 years).

The acquisition, storage, or marketing of property received through the commission of a criminal offence is punishable with a fine, or up to one year of imprisonment.

According to Article 196^{1} of the Criminal Code and Article 255 of the new Penal Code belonging to a permanent organization consisting of three or more persons, who share a distribution of tasks, and who deal with the commission of criminal offences of a first degree, or exercise unlawful influence on public authorities is punishable by 3 to 12 years' imprisonment. Therefore belonging to a terrorist entity is also considered as a crime.

Being an accessory to a crime is considered a crime in Estonia. Thus, the funding or supplying of any financial support for terrorist acts is also considered to be the committing a terrorist act. The penalties for such activities – imprisonment from 6 to 15 years – are stipulated in Estonia's Criminal Code Article 17 and Penal Code Article 22.

Financing of terrorism itself should be explicitly made a criminal offence. Therefore, existing *Money Laundering Prevention Act* needs to be supplemented. A work-group has been established for this project, and the deadline for presenting these legal amendments to the Government is 1 November 2002.

Sub-paragraph 1 (c):

1. In order to clarify matters, it should be noted that it is legally possible to arrest any assets during criminal proceedings, especially if the assets are related to the crime (Article 146 of the Code of Criminal Procedure). In addition to general clause in Article 146, assets can also be arrested on the basis of a special provision in Article 146[1] of the Code of Criminal Procedure if money laundering is suspected. Presently, only the investigative bodies (including the Financial Intelligence Unit) in pre-trial procedures and the court have the powers to arrest or freeze financial assets. The Financial Supervision Authority does not yet have the full powers for such actions.

When the International Sanctions Act will be implemented, the FSA, under a Government order, will also be able to prohibit any financial transactions with terrorists or terrorist entities. These powers will also include the right to freeze transactions with securities.

2. Chapter 35 of the Code of Criminal Procedure has stipulated provisions for international cooperation between countries. Estonia has concluded several international agreements with other countries and has also ratified the criminal conventions of the Council of Europe. According to the above-mentioned documents and Article 413 of the Code of Criminal Procedure the Minister of Justice, or a legal authority appointed by the Minister, can apply for the arresting of a person's assets in another country.

3. According to the draft International Sanctions Act, that is to be adopted in 2002, the Government will be able to prohibit any financial transactions with persons and entities associated with terrorism. According to Article 3 of the draft International Sanctions Act, the Government will have powers to prohibit any commercial activity, lending activity, money payments, transactions with securities, etc. with persons suspected in any kind of criminal activity on an international level. The Government will implement the international sanction with appropriate regulations.

* Estonian legal provisions on the basis of which the financing of terrorist activities is subject to criminal prosecution

- The international Convention for the Suppression of the Financing of Terrorism was ratified by the *Riigikogu* on 20 March 2002, and became effective on 22 April 2002.
- The financing of terrorism is a criminal offence according to Article 17, section 2 (participation) of the Criminal Code and Article 64[1] (terrorism) or Article 65 (a terrorist act committed against the representative of a foreign country).

See Criminal Code § 17, 64[1] and 65.

- Upon the implementation of the Penal Code, the financing of terrorism is a prosecutable crime according to § 22 section 3 (participant) and § 237 (terrorism) or § 246 (an attack against the life or health of an internationally protected individual).

See Article 22, 237 and 246 of the Penal Code and Article 146 of the Criminal Code (confiscation of assets) and 146[1] (confiscation of assets for the suspicion money laundering).

On the basis of a court warrant it is possible, according to the sections of Article 33 of the Criminal Code, to confiscate the means and tools for the commission of a crime and the assets acquired thereupon. Therefore, if a person is found to be guilty of supporting terrorists or participating in a crime, which has been committed to finance terrorism, then it is possible to confiscate the guilty person's assets, which were meant for financing terrorism, or assets to the extent of the financing of terrorism.

This is reflected in Criminal Code Article 33 (special confiscation) and 33[1] (the substitution of special confiscation).

Property which is suspected of being connected with money laundering is seized by the preliminary investigator conducting the legal proceedings in the criminal offence of money laundering in order to secure a request for international legal assistance, seizure or civil matter if other measures are exhausted.

Property shall be seized pursuant to the procedure provided for in the Code of Criminal Procedure on the basis of an order of a preliminary investigator or prosecutor and only with the consent of a judge.

The Code of Criminal Procedure provides for the sequestration of assets if money laundering is suspected (Article 146 and 146[1]).

If a terrorist act is committed on Estonian territory, and the financing of the terrorist act, within the concept of the UN convention dealing with the financing of terrorism, is done from outside the territory of Estonia, then the appropriate Estonian authorities will approach the authorities of the state in question for the freezing of the individual's assets. The freezing of an individual's assets, who is suspected of financing terrorism within Estonia, can be done through legal proceedings.

If a terrorist act is committed outside of Estonia, and the financing of the act, within the parameters of the UN convention dealing with the blocking of internationally supporting terrorism, is done on Estonian territory, Estonian authorities may approach other states for the freezing of the individual's assets.

Sub-paragraph 1 (d):

A financial institution as defined in the Credit Institutions Act is a financial institution, or a branch of a foreign financial institution as listed in the commercial register in Estonia.

A financial institution's definition is listed below:

1) An insurer, insurance agent, or insurance broker, as is defined in the Insurance Act (RT 1992, 48, 601; RT I 1995, 2628, 355; 1996, 23, 455; 40, 773; 1998, 61, 979);

2) An investment fund as defined in the Investment Funds Act (RT I 1997, 34, 535; 1998, 61, 979) etc.;

3) A professional securities market participant as defined in the Securities Market Act (RT I 1993, 35, 543; 1995, 22, 328; 1996, 26, 528; 1997, 34, 535; 1998, 61, 979).

The Money Laundering Prevention Act prescribes other undertakings that can be used for money-laundering purposes.

The following are undertakings which are not credit or financial institutions for the purposes of this Act but which can be used for money-laundering purposes:

1) Undertakings, of which the principal or permanent activity is transactions with real estate or the organization of gambling or lotteries, and undertakings that operate as intermediaries in such areas of activity;

2) Other undertakings which carry out or act as intermediaries for transactions of at least the value specified in subsection 7 (3) of this Act.

According to the Estonian law, charitable funds can operate in the form of either a non-profit organization or a foundation. Both of these entities are obliged to have formal book-keeping subject to the rules laid down in the Accounting Act, which is in compliance with the EU directives. These institutions have to present the annual accounts to either the register of non-profit organizations or the register of foundations. If there is a suspicion of criminal activity (incl. terrorism) in the activities of a charitable institution, the case will be handed over to the police or the prosecutor.

It is possible for non-resident persons and entities to hold funds (e.g. cash accounts) in Estonian financial institutions. However, it should be noted that according to the Money Laundering Prevention Act all financial institutions have to identify their clients on-the-spot. So each person or entity must have identified themselves at the particular financial institution in Estonia at least once, while opening the account.

There are not any specific acts of legislation dealing with the collection and use of the funds of charitable institutions. Their activities are regulated in the Act of Non-Profit Organizations and several acts of tax legislation.

There is no different treatment for residents or non-residents with regard to holding funds in financial institutions, provided that the identification of the client meets every requirement and the legal origin of the resources has been verified.

According to Article 7 paragraph 3 of the Money Laundering Prevention Act an undertaking, which is not a credit or financial organization for the purposes of Money Laundering Prevention Act, but can be used for money-laundering purposes (mentioned above), including money transfer agencies that receive from a client, more than 100 000 EEK in cash is obliged to fulfil the requirements of the Money Laundering Prevention Act (identifying the client, reporting to the Financial Intelligence Unit of any suspicious transfers, etc).

There is not any legislation in Estonia governing the alternative money transfer agencies, except for the MLPA.

Sub-paragraph 2 (d):

According to Article 258 and 259 of the Penal Code, illegal crossing of the borders of the Republic of Estonia, and the illegal transportation of aliens across the borders of the Republic of Estonia are punishable.

- Article 6 section 3 of the Security Authorities Act stipulates that the State Security Board will deal with these matters, and will investigate said matters. In the case of terrorist acts, the State Security Board will conduct the pre-trial investigations.
- Article 3 paragraph 1 section 1 of the Surveillance Act stipulates the following: "The function of the security agency is to gather information and to perform other functions which have been spelled out in this legislation, which are necessary for the prevention of crimes that are being planned or are in the process of being executed."

Sub-paragraph 2 (e):

All the relevant provisions of the Criminal Code of Estonia are applicable since Article 5 of the Criminal Code stipulates that the legislation is also effective for acts committed outside the legal boundaries of the territory regulated by this legislation if the act is defined as a punishable crime by local laws, or if no legal measures cover that area, and if:

1) The committer of the act, at the time of committing the act, was a citizen of the Republic of Estonia, or became a citizen after performing the act, or

2) The committer of the act, at the time of committing the act, was the citizen of another country, or a stateless person, who has been apprehended in the Republic of Estonia and is not subject to extradition.

According to the Estonian Penal Code:

1) The highest authorities of the Estonian state and the representatives of other states must be protected;

2) The state is on the same level as essential international organisations (UN, NATO, the sub-organisations and representations of the European Union).

According to the Penal Code, terrorism is a crime directed against the state. This can be defined as a crime which is not directed against the state as such, but which can seriously harm the activities of the state, and thereby the functioning of the state.

At the same time, the legislation stipulates concrete acts which deal with attacks aimed at other states (see Article 65 and 246 of the Penal Code).

Sub-paragraph 2 (f):

In 1997, Estonia became party to the European convention dealing with mutual assistance and the prevention of terrorism. International cooperation in connection with criminal legal proceedings is regulated by Article 10 of the Estonian Criminal Code. Estonia has concluded relevant agreements with Latvia, Lithuania, Ukraine, Russia, and Poland. On a Governmental level, a cooperation agreement has been

concluded with Finland for the prevention of crime, which simplifies the cooperation between the crime prevention agencies of the two states.

Article 397 of the Criminal Code stipulates that:

Requests for legal assistance in criminal matters shall be adjudicated on the basis of the international agreements of the Republic of Estonia. Legal assistance to states, with which an international agreement has not been made, shall be provided pursuant to the principles arising from the criminal conventions of the Council of Europe, which have been ratified, by the Republic of Estonia, and this Party.

Estonian law and international agreements determine the procedure for communication with pre-trial investigation authorities, prosecutor's offices, and courts of foreign states. Communication with a foreign state with which Estonia has not entered into an agreement shall take place solely through the Ministry of Foreign Affairs of Estonia.

Applications by pre-trial investigation authorities, prosecutor's offices, and courts of foreign states **for the execution of procedural acts**, if such acts are subject to enforcement, shall be prepared and formalized in accordance with Estonian law, unless otherwise provided for in international agreements.

Sub-paragraph 2 (g):

According to Article 22 of the Security Authorities Act state and local officials, just as all individuals with an official status, must provide assistance to law enforcement agencies, within the scope of their competence. According to Article 31 of the same Act, a security authority may, in the process of performing its duties, approach the state, or a local administration, or an official to obtain information concerning an individual if the information is not available from generally accessible sources, or the obtaining of the information would be prohibitively expensive, or the information is in transit, or the obtaining of the information would in some way be apprehended, and if the forwarding of this information is not in some way legally forbidden. In addition to the legal obligation of government agencies to assist each other, there are specific cooperative agreements between various government agencies that stipulate, in detail, the procedures for aiding each other.

On 5 October 2001, a cooperation agreement between the Customs Board and the Security Police Board was signed. Cooperation agreements between the Customs and the Police and the Customs and the Border Guard were signed on 21 November 2001.

In order to practically arrange domestic cooperation, a working group of the representatives of the mentioned agencies has been formed. The working group is responsible for the arrangement and implementation of joint activities. The working group meets on a regular basis and deals with all the areas of cooperation.

Sub-paragraph 3 (d):

Estonia made the reservation to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the joining of which has so far been dependent upon joining the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which became effective on 16 May 2002.

The Convention for the Suppression of Terrorist Bombings was ratified on 10 April 2002, and the Convention on the Suppression of the Financing of Terrorism was ratified on 22 May 2002.

Estonia fully implements the provisions that are stipulated in these UN conventions.

Estonia follows the principle set forth in Article 11 of the Convention for the Suppression of Terrorist Bombings, that none of the terrorist offences (Article 2) shall be regarded as political offence. The request for extradition may not be refused on the ground that it concerns a political offence.

Sub-paragraph 3 (g):

Extradition provisions are settled in the Code of Criminal Procedure. Bilateral extradition treaties are from the pre-war period, for example with USA (1924), UK (1926) and Spain, Norway (1930) etc.

The Republic of Estonia, in accordance with Article 13, paragraph 1 of the European Convention on Suppression of Terrorism, and subject to the conditions thereof, reserves the right to refuse extradition in respect of any offence mentioned in Article 1 of the Convention which it considers to be a political offence or an offence connected with a political offence.

Paragraph 4:

Since there is a concrete necessity to enhance the coordination of efforts on national, subregional, regional, and international levels to strengthen the global response to international terrorism and transnational organized crime, illicit drugs trafficking, money-laundering, illegal armstrafficking, and the illegal transport of nuclear, chemical, biological, and other potentially deadly materials which pose a serious threat to international security, Estonia has intensified its efforts, and is doing its utmost, to adequately meet the challenges of the present era. We are continually making a concerted effort to improve coordination between the various government agencies and to speed up the process of exchanging information. The same stress is being placed upon the proper, timely, and thorough fulfilling of international bi- and multilateral treaties and the obligations which accrue with international organisations like the United Nations and the European Union.

Other matters:

The independent Financial Supervision Authority administratively linked to the Estonian Bank supervises the activities of credit institutions, financial institutions, insurance companies, investment firms, investment funds, management companies, the registrar of the central register of securities, and the stock exchange. Applicable law: Financial Supervision Authority Act.

There are two supervisory bodies operating in the area of governance of the Ministry of Finance:

Tax Board – implementing of the taxation law: excise duties, income tax, gambling tax, gift and inheritance tax, value added tax, land tax, social tax, customs duty, heavy goods vehicles tax. Applicable law: Taxation Act.

Customs Board – Applicable law: Customs Code.